Petition

81-1410

Office - Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

AMOS J. REHBERGER
Petitioner,

v.

GARY DARNELL,
Respondent,

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT FOR THE FIFTH JUDICIAL DISTRICT OF THE STATE OF ILLINOIS

AMOS J. REHBERGER
Petitioner pro se

Address:

200 North Main Street
Anna, Illinois 62906
(618) 833-7612

QUESTION PRESENTED FOR REVIEW

Whether a State Appellate Court acted without a reasonable basis in affirming the Order of a Trial Court refusing to vacate a jury verdict and judicial award of costs in favor of a person who had not, as a peace officer official sued under Title 42 U.S.C. Sec. 1983, impeached by a pleaded affirmative defense and competent evidence presented thereon, the 9th, 5th, and 14th Amendment secured rights of an unindicted citizen to be and to stay within his private Illinois property, free from judicially unwarranted night time custodial arrest.

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PETITION FOR WRIT OF CERTIORARI TO
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THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF ILLINOIS

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

Amos Rehberger, petitioning pro se respectfully prays that a Writ of Certiorari issue to review the decision of the Appellate Court for the Fifth Judicial District of the State of Illinois filed on August 20,

1981, a Petition for leave to appeal as a matter of right having been denied by the Supreme Court of Illinois on October 30, 1981.

OPINIONS BELOW

The Order and Judgment of the Circuit Court of Union County, Illinois, filed February 14, 1980, adjudging that Defendant Gary Darnell go hence without day and recover his costs of suit from Plaintiffs and have execution for them is in the Appendix at pages A-1 thru A-5, infra, and is not officially reported. The Order of the Circuit Court of Union County, Illinois, denying the post trial motions (C, 118-122) of the Plaintiff in arrest of judgment and for a new trial, filed March 12, 1980, and denying, also, Defendant Gary Darnell's motion filed March 24, 1980, for attorney

fees, is at page B-1 thru B-2, infra and is not officially reported. The order of the Appellate Court for the Fifth Judicial District of Illinois, affirming the February 14, 1980 judgment of the Circuit Court of Union County and finding the Circuit Court's order denying Darnell attorney fees was not shown to have been erroneous in its finding that Plaintiffs' action was not unreasonable, frivolous, meritless, or vexatious, was filed August 20, 1981, is not officially reported, and, is in the Appendix at pages C-1 thru C-18, infra.

Darnell as Cross-appealing party did not further petition in the Appellate Court or Supreme Court of the State of Illinois and the Appellate Court on September 22, 1981, filed another officially unreported order carrying with it an award to Darnell of only Appellate costs, that

Order being also in the Appendix at pages D-1 thru D-3, infra.

Rehberger filed in the Supreme Court of Illinois a Petition for Appeal as a Matter of Right and the officially unpublished November 30, 1981, denial of that Petition is at E-1, infra.

JURISDICTION

The date of the order of the Appellate Court for the Fifth Judicial District of Illinois sought to be reviewed is August 20, 1981, which is also the date of its filing. Petition for Appeal as a Matter of Right filed by Rehberger was denied by the Supreme Court of Illinois on November, 30, 1981. Jurisdiction of this Court is invoked under Title 28 U.S.C. Sec. 1257 (3) and Supreme Court Rule 19 (a).

STATUTES INVOLVED

Federal

Title 42 U.S.C. Sec. 1983:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, priviliges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."

State

Illinois Revised Statutes, Chapter 38, Sec. 107-2:

"107-2. (§ 107-2. Arrest by Peace Officer.) A peace officer may arrest a person when:

(a) He has a warrant commanding that such person be arrested; or

(b) He has reasonable grounds to believe that a warrant for the person's arrest has been issued in this State or in another jurisdiction; or

(c) He has reasonable grounds to believe that the person is committing or has committed an offense.

Illinois Revised Statutes, Chapter 33, Sec. 1:

"1. Security for costs.] §§ 1. In all actions in any court on official bonds for the use of any person, actions on the bonds of executors, administrators, or guardians, qui tam actions, actions on a penal statute, and in all civil actions, where the plaintiff, or person for whose use an action is to be commenced, shall

not be a resident of this State, the plaintiff, or person for whose use the action is to be commenced, shall, before he institutes such suit, file, or cause to be filed, with the clerk of the court in which the action is to be commenced, security for costs, substantially in the following form:

A B v. C D -- (Title of court.)

I, (E.F,) do enter myself security for all costs which may accrue in the above cause.

Dated this ..... day of ....., A.D., ...

(Signed) E F."

Illinois Revised Statutes, Chapter 38, Sec. 110-7 (f):

"110-7. §§ 110-7. Deposit of Bail Security.)

(f) When the conditions of the bail

bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court shall return to the accused, unless the court orders otherwise, 90% of the sum which had been deposited and shall retain as bail bond costs 10% of the amount deposited. However, in no event shall the amount retained by the clerk as bail bond costs be less than $5.00.

STATEMENT OF THE CASE

Amos Rehberger and his son, Jeffery, (not a party to this petition in this Court) instituted Title 42 U.S.C. Sec. 1983 claims against peace officer Gary Darnell, and, against Larry Tripp, sued individually and as Sheriff of Union County and Warden ex Officio of the Union County Jail (not a party here in this Court), also Herman L. Stokes, Carl W. Boyd and W. P. Rendleman, each sued individually, and as the Board of Commissioners of Union County, a local public entity (not parties here in this Court). The claims were instituted in the Circuit Court of Union County on either, or, both 1983 and straight action on implicated causes of the 14th Amendment claims.

The only civilly sued party who is now here in this Supreme Court, Gary Darnell, dressed in peace officer uniform,

joined his civil counsel in the civil trial court only after commencement of voir dire proceedings (Appendix A-2) in this civil action early in 1980, the purpose of these voir dire proceedings being to pick a six person jury to try only Darnell's money damage liability if any on claims against Darnell. Plaintiffs theorized Darnell as a person had, under guise of law in breach and violation of 42 U.S.C. 1983 acting under color of but not by virtue of Chapter 38 I.R.S. Sec. 107-2, wilfully and wantonly custodially arrested Rehbergers at night on Amos Rehberger's private rural property, and materially contributed to caused undue restraint of liberty prior to unprompt trials. In response to those claims filed July 20, 1978, Darnell, by his attorney, filed on August 8, 1978, a Motion to Stay the 78-L-11 case at bar, the Motion to Stay

alleging the pendency of 78-TR-18, the speeding claim against Jeffery Rehberger and also alleged in this document the pendency of criminal proceedings in 78-CF-3 and 78-CF-2. Darnell then caused or controlled this Motion to Stay to be not ruled on until Darnell withdrew it, in November of 1978 after the "criminal case is in the Appellate Court" (C, 208) (C, 148 lines 22-23) (C, 156, lines 19-24). After this Defendant Darnell, in 1979, attacked the Amended Complaint (C, 038-052) which was amended by leave of the Court which struck for "vagueness" (C, 037) the original complaint (C, 001-015). That original Complaint having been filed July 20, 1978, prior to the filing of the Notice of Appeal in connection with the People v. Rehberger matter referred to in the Appellate Court Order (Appendix C-5), a review of which

is sought. Darnell made the attack on Amended Counts I and II by filing in 78-L-11, by counsel, copies of what was alleged by Darnell as a party to be the First Judicial Circuit Court of Union County's judgment and sentence documents in Information based 78-CF-3 and 78-CF-2 as well as Traffic Citation based 78-TR-18 (C, 057-062). It was after this attack was denied as to amended Counts I and II that Darnell filed on September 7, 1979, his unverified Answer to Amended Counts I and II (C, 066-067). No affirmative defense was pled by Darnell (Appendix C-14-15) and his Motion by counsel for Summary Judgment for Darnell was denied by the civil trial Judge in January, 1980. (C, 084-088) (C, 104).

A twelve person jury had found Rehbergers guilty in those previous criminal proceedings which stemmed from Darnell's judi-

cially unwarranted arrests and were commenced without grand jury indictment; guilty of some, but not all accusations laid against them. Including, a finding of guilty against Jeffery Rehberger, of a speeding offense, the original accusation of which offense was first laid in a ticket form of charge process Deputy Sheriff Darnell had caused to be issued against Jeffery. A ticket form of charge process later examined by officials superior to Darnell for the purpose of determining whether in the circumstances of Jeffery, who Darnell accused, the ticket would or would not be form of charge process (Appendix C-4-5) proper to be used in instituting public criminal action or actions on the penal speeding or speeding and other penal statutes of Illinois. That jury's verdict finding that speeding had been committed,

and, other verdicts of that jury finding that other offenses beginning with the offense of speeding had been committed, had never been pronounced as a verdict in open court to occasion the exercise by either Rehberger of the right to poll the twelve persons who constituted that jury. See the published opinion of the same 5th District Court in People v. Rehberger, 73 Ill. App. 3rd 964, 392 N.E. 2d 395, Petition by State for Leave to Appeal denied.

In the civil trial the judge, on motion of Darnell's counsel, ordered prior to presentation of evidence that Plaintiff's not present in 78-L-11 evidence relating to prompt trial, or, any other insurance (C, 4). Darnell, by counsel, prior to presentation of evidence in these civil proceedings confessed as a party before the civil case Judge that Darnell had no quarrel with a

Plaintiff motion in limine addressed to Darnell not having, when civil trial evidence presentation go underway, the right as a party to present evidence about police officers having the right to stop or stop and frisk persons or vehicles on public roads. Darnell had admitted as a civil party that he, a peace officer armed with ticket form of charge process, had driven his county vehicle into the driveway of the circumscribed, private, Rehberger rural premises without flashing red light in order to investigate and determine what he still had not then known, the identity of which of two unidentified persons was the driver person. Also, that then if whoever that person was did not, to assure his appearance in what was to become Darnell's non-institutable as an action on a penal statute 78-TR-18 ticket form of statutory charge process undue

in any event, deposit cash bail with Deputy Sheriff of Union County Gary Darnell, that person was to be taken by Darnell to the Union County Jail. Darnell had followed the vehicle miles past the only exercise of a criminal agency (speeding) that Darnell, or, any accusing entity - or de facto surety of an accusing entity - ever claimed either Rehberger liable for exercising prior to the time of Darnell's - following action - entry into the circumscribed private Rehberger rural premises. The civil trial Judge at jury instruction conference found, as law-fact, that Darnell's entry was not a hot pursuit police action. (R.O.P. 1/31/80, pages 4-5, 66) (C, 113) (C, 104) (C, 082) (C, 074-075) (C, 082, par. (b)) (C, 105-1100) (R.O.P. p. 311-340).

ARGUMENT

The Appellate Court and Supreme Court of Illinois orders, (Appendix C-1-18) (Appendix D-1-3) (Appendix E) deal with, but only by implication (Appendix C-4-5), a fact this Court may infer. Darnell, did not and at all germane times knew that he could not competently prosecute in his official capacity and in accordance with law file or cause the filing of security for costs in any action on a penal statute against either Rehberger. That is why he and de jure surety available to other peace officer official persons similarly situated did not in their official de jure capacities assume and carry the burden of pleading and earning the taxable costs of an Illinois Court conducting a jury trial of an affirmative defense "case". Gomez v. Toledo, (1980) 446 U.S. 635, 640, 64 L.Ed. 2d 572, 578,

100 S.Ct. 1920.

This Court is not being asked to directly review criminal proceedings. It is free, therefore, to infer Darnell's caused or controlled failure to safely institute in de jure accordance with Chapter 33 I.R.S. Sec. 1 law and public policy any action on any penal statute against Amos J. Rehberger and then promptly prosecute that claim in his official capacity and in an edifice of justice. This is inferable since, subsequent to the "criminal trial and prior to its reversal" (Appendix C-6) Petitioner Amos J. Rehberger's and his son Jeffery's not unreasonable civil 78-L-11 action this Court is being requested to review was filed and prosecuted in a duly constituted tribunal (Appendix C-4-6, 8-9, 17). Compare and distinguish Morse v. Nelson, 48 Ill. App. 3rd 895, 899, 363

N.E. 2d 167 where the same Appellate Court reasoned from the face of pleadings in that merely pleadings case that government as State government was admitted to an instituted circuit court action on a penal statute as a party adversary of a particularly identified person whose corpus was then in custodial arrest circumstances. From the pleadings it was deduced that a Circuit Court's warrant of the competency of the cause of the accusation of Morse coming to the circuit court was promptly issued not only on the strength of a positive oath objectively filed in the cause but, also, the leverage weight of laterally supportive surety. Therefore, the Appellate Court reasoned the right of Morse to be free from what only might later be determined to be excessively grievously penalizing pre-trial restraint of his liberty,

collateral to the Circuit Court's exercise of its jurisdiction over that officially pending action on a penal statute, was a right that had been impeached, at the only germane time, in the venue. Circuit court redress and remedy power could not then, spring under or flow over or, apparently, through the bar that the Appellate Court reasoned had thus been erected to Morse's 1983 action in that venue. It is inferable, however, that Petitioner Amos J. Rehberger's cause vehicle survived the pleading stage, and that Darnell's assertion of his right to be and to stay, in or out of guise of uniform, away from the bar of the circuit court had been impeached by Petitioner's claim vehicle.

Further inference that this Court should review the Appellate Court's ruling in this non-pleading matter flows from the fact

that the Illinois Appellate Court Order and judgment is one which denied a cross appeal after which denial no further direct review was sought by cross appellant. Illinois trial court judgments include and carry with them to Appellate Court watershed all costs, in the absence of a contrary provision, and so the Appellate Court's second Order (Appendix D-1-3), entered before Supreme Court of Illinois action may prove to be a bar provision contrary even to Darnell's attorney's basic contention. A contention there was prospectively due on remand as a matter of statutory springing use or other right, statutory trial court costs more grievous excessively penalizing or burdensome to the client Darnell, any de facto surety of the client, or to the attorney, or, to each of them, than are like statutory costs of persons situated

similarly to them and each of them. Cf. People of the State of Illinois v. Cook, 81 Ill. 2d 176, 181, 407 N.E. 2d 56.

The Illinois Appellate Court and Illinois' Supreme Court have in the circumstance here presented exercised and opted not to exercise what they deemed to be delegated discretionary power, a review of which exercise and non-exercise of power Petitioner seeks. An official failed to prosecute to the highest State Court pro-se or by counsel an appeal of the denial of a Title 42 U.S.C. Sec. 1988 motion. A motion that theorized the official, and the attorney for the official who objectively or admittedly had not been competent to carry the burden of pleading and prosecuting in his official capacity in any "pending" matter an action or affirmative defense on any penal statute of the State of Illinois,

had, and now was in individual capacity claiming not only an interest in but a vested interest in non-"case", pooled, costs. Moreover, the motion was being made pre-trial of and in functional mutual exclusion of the exercise of the right should he opt to exercise it, of the Attorney General to claim the portion of grievously excessively penalizing costs still pooled, after the "criminal case is in the Appellate Court". (C, 208) (C, 148 lines 22-23) (C, 156, lines 19-24). Costs excess and expense which this Court may note objectively arose under guise but not the virtue of law including the Chapter 38 I.R.S. Sec. 110-7 (f) statute.

This Supreme Court's own power to move and make waves should it exercise it, to review and redress and balance by "contrary provision", actual damage to Petitioner

stemming from the raising of the costs of provision to Petitioner of the blessings of liberty is plenary. Compare, Tartar v. Hury, 1981), 646 F. 2d 1010, 1014, an opinion which appears to be in conflict with the rationale state court of the last resort's opinion on Petitioner's direct appeal. Also, see for the same reason, Terry v. Ohio, (1968), 932 U.S. 1, 26, 20 L.Ed. 2d 889, 908, 88 S.Ct. 1868, 1882.

A person's rights are not "..... less than those that protect from a liability in debt." U. S. v. Oppenheimer, (1916), 242 U.S. 85, 87, 61 L.Ed. 161, 164, 37 S.Ct. 68, 69. Petitioner was and is a person and resident citizen of Union County, Illinois.

CONCLUSION

The astuteness and adroitness with which unwarranted police action can cause, at public expense, senseless uprooting of personality, privacy, and property interests of American citizens has been the target of several of this Court's opinions cited in this Petition. The opinion or a portion of the Federal Appellate Court cited Tartar v. Hury, (1981), 646 F. 2d 1010, 1014 deals in part with persons' - pro se - utilization of the secured rights they have. This Court should grant certiorari to apply law to the facts of this case, reverse the 5th District Appellate Court of Illinois with directions as to the right of Amos J. Rehberger to a fair trial not having been impeached, and, with directions as to liquidated or other money damage remedy sought by or due Petitioner. So

doing would enable persons, particularly property owners, to reassess as alerted citizenry the threat of unwarranted penal liability or other harm to penal or property interests that is a real threat from unwarranted police action local grand juries may not be protection and bar and assurance enough against.

Respectfully submitted,

AMOS J. REHBERGER
Petitioner pro se

Appendix

APPENDIX A

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

UNION COUNTY, ILLINOIS

JEFFERY L. REHBERGER and AMOS J. REHBERGER, Plaintiffs, vs. GARY DARNELL, LARRY TRIPP, individually and as Sheriff of Union County and Warden ex Officio of the Union County Jail, and, also HERMAN L. STOKES, CARL W. BOYD, and W. P. RENDLEMAN, individually and as the Board of Commissioners of Union County, a local public entity, Defendants.	)	No. 78-L-11 AT LAW

JUDGMENT ORDER

NOW ON this 31st day of January, 1980, comes on to be heard the above styled cause for jury trial upon the issues formed by Counts I and II of the Plaintiffs' Amended Complaint, as amended, and Defendant's Answer thereto.

The parties announce ready for trial.

Present in open Court is the Plaintiff, Amos J. Rehberger, and the Plaintiff, Jeffery L. Rehberger, together with their Attorney, Dennis J. Hogan. Present in open Court is the Attorney for the Defendant, Charles E. Schmidt, who is joined by the Defendant, Gary Darnell, during the selection of a jury.

Thereupon, a jury is called into the box and certain questions are propounded to them by the Court and the Attorneys. Six (6) jurors having been agreed upon by the Court and respective counsel, they are duly sworn to try the issues in this cause. Opening statements are made by respective counsel and Plaintiffs present their evidence. The Plaintiffs rest and a Motion for Directed Verdict at the close of the Plaintiffs' case is made on behalf of

the Defendant, Gary Darnell, as to Counts I and II of the Plaintiffs' Amended Complaint and said Motion is denied.

Defendant, Gary Darnell, presents his evidence and continues the presentation of his evidence on February 1, 1980. Defendant then rests. A Motion for Directed Verdict at the close of Defendant's case is made on behalf of the Plaintiffs, Amos J. Rehberger and Jeffery L. Rehberger, and said Motion is denied. Defendant, Gary Darnell, moves for Directed Verdict at the close of Defendant's evidence and said Motion is denied.

A conference is held by the Court and respective counsel out of the presence of the jury on jury instructions. Certain instructions are presented by Plaintiffs' counsel and Defendant's counsel and some instructions are given, some are rejected,

and some instructions are presented by the Court.

On February 2, 1980, closing arguments are made by the respective counsel to the jury. The jury is thereupon instructed as to the law by the Court.

The jury thereupon retires to consider its verdict and returns into open Court on Saturday, February 2, 1980, and announces its verdict, as follows:

"We, the jury, find for the Defendant and against the Plaintiffs."

The general verdict is signed by the Foreman and each of the five (5) other jurors and the verdict is in good and proper form.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Plaintiffs, Jeffery L. Rehberger and Amos J. Rehberger, take nothing by this action and Judgement is hereby entered for the Defendant, Gary Darnell, and that said

Defendant go hence without day and have and recover from the Plaintiffs, his costs of suit and have execution issue therefor.

DATED this 14th day of February, 1980.

E N T E R: /s/
GEORGE OROS
Circuit Judge

APPENDIX B

IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT

UNION COUNTY, ILLINOIS

JEFFERY L. REHBERGER and AMOS J. REHBERGER, Plaintiffs, vs. CARY DARNELL, LARRY TRIPP, individually and as Sheriff of Union County and Warden ex Officio of the Union County Jail, and, also HERMAN L. STOKES, CARL W. BOYD, and W. P. RENDLEMAN, individually and as the Board of Commissioners of Union County, a local public entity, Defendants.	)	No. 78-L-11 AT LAW

ORDER

THIS MATTER coming on for hearing this 23rd day of April, 1980, on the post trial motion of Plaintiffs' in arrest of judgment and for a new trial and on the motion of Defendants for attorneys fees and the Plaintiffs being personally represented in open Court by their Attorney, Mr. Dennis J. Hogan

and the Defendants being personally represented in open Court by one of their attorneys, Charles E. Schmidt, and the Court, being advised in the premises and having heard oral arguments and citations of authority by counsel:

IT IS, THEREFORE, ORDERED, AND ADJUDGED as follows:

a. The post trial motion of Plaintiffs, Jeffery L. Rehberger and Amos J. Rehberger, is hereby denied.

b. The motion of Defendants, Gary Darnell, Larry Tripp, Herman L. Stokes, Carl W. Boyd, and W. P. Rendleman, for attorneys fees is hereby denied.

Dated 28th day of April, 1980.

ENTER: /s/
Circuit Judge, George Oros

APPENDIX C

NO. 80-242

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

JEFFERY L. REHBERGER and AMOS J. REHBERGER,	)	
Plaintiffs-Appellants,	)	Appeal from the Circuit Court of
v.	)	Union County.
GARY DARNELL, LARRY TRIPP, individually and as Sheriff of Union County and Warden ex Officio of the Union County Jail, and, also, HERMAN L. STOKES, CARL W. BOYD and W. P. RENDLEMAN, individually, and as the Board of Commissioners of Union County, a local public entity,	)	Honorable George Oros, Judge Presiding.
Defendants-Appellees.	)	

KASSERMAN, P.J.

O R D E R

After the return of a jury verdict against them, plaintiffs, Amos and Jeffery Rehberger,

appeal from certain orders of the circuit court of Union County entered in their suit against certain public officials of Union County for false arrest and false imprisonment in violation of 42 U.S.C. §§ 1983.

On appeal, plaintiffs contend that: (1) the trial court erred in dismissing counts III through IX of their amended complaint; (2) the court erred in denying plaintiffs' motion for a directed verdict; and (3) the court erred in denying plaintiffs' post-trial motion.

This action arose out of an incident which took place on January 5, 1978. Officer Darnell testified that he was on duty that night, patrolling on Route 146 in an unmarked police car when the Rehberger car passed him at a high rate of speed. He stated that he followed the car into the Rehberger driveway and then attempted to

issue Jeffery Rehberger, the driver of the car, a speeding citation and that an altercation ensued involving Amos Rehberger, Jeffery Rehberger and himself.

The testimony of plaintiffs and defendant differed substantially as to what occurred that night. Plaintiffs testified that Darnell became verbally and physically abusive towards them when asked by Amos Rehberger what he was doing on the Rehberger property and what business he had with Jeffery. Darnell testified that Amos Rehberger became verbally abusive and violent when Darnell attempted to issue a speeding citation to Jeffery. There was also a sharp dispute among the witnesses about the point at which Darnell identified himself as a deputy sheriff of Union County. Amos Rehberger testified that Darnell did not identify himself as a deputy sheriff until the altercation had ended and he was being handcuffed by

Darnell. Darnell testified that although he wore no hat or jacket, he wore a full uniform, with a star, and also wore a duty belt which held a gun and handcuff case. He further testified that he identified himself as a deputy sheriff immediately upon getting out of his car and approaching Jeffery Rehberger to issue the speeding citation. Plaintiffs also testified that the headlights of Darnell's car were not on and they did not see a citizens band radio, a police radio, public address system, red light, or riot gun in the car. Darnell testified that his headlights were on, that there was a citizens band radio and a police radio, both of which were turned on, a red light, and a riot gun in the front seat area of the car. Informations charging each of the plaintiffs with three offenses were filed January 5, 1978. Amos Rehberger was charged with aggravated

battery, aggravated assault, and resisting a peace officer, and Jeffery Rehberger was charged with aggravated battery, resisting a peace officer, and speeding. Later the same day the Rehbergers were arrested and brought before a judge who set bond at $2,500 for Jeffery and $5,000 for Amos. They were both released on bond on that date.

Plaintiffs were tried in the Union County circuit court and verdicts were returned by the jury finding them guilty of four of the six charges. Amos was found guilty of aggravated battery and resisting a peace officer, and Jeffery was found guilty of resisting a peace officer and speeding. Their convictions were reversed by this court on appeal on procedural grounds (People v. Rehberger (5th Dist. 1979), 73 Ill. App. 3d 964, 392 N.E. 2d 395); however, subsequent to the criminal trial and prior to its reversal, the Rehber-

gers filed a civil complaint initiating the action which is the subject of the instant appeal.

Plaintiffs' first contention is that the trial court erred in granting defendants' motion to dismiss Counts III through IX of their amended complaint. Plaintiffs argue that this dismissal constitutes reversible error because Counts III through IX contained sufficient facts to apprise the opposing parties of the nature of the claims against them.

From our reading of the complaint, Counts III and IV, by Jeffery and Amos Rehberger respectively, charge Larry Tripp, sheriff of Union County, with fostering and maintaining a "bail security switching device or scheme." This "scheme" allegedly resulted in an interference with the right of plaintiffs to obtain judicial review of their arrest.

In Count III, plaintiffs allege that Tripp:

"(a) Made or produced a spurious affidavit or oath of Deputy Sheriff Gary Darnell on a Ticket or Criminal Complaint form;

(b) Receipted the Plaintiff for $250.00 (Ex. A) for a deposit of bail security on a Violation of 95½ using a spurious affidavit as a pretense of justification;

(c) Deposited the $250.00 with the Circuit Clerk (Voucher No. 18768) switching the application of the deposit to 78-CF-3 an action on penal statutes of the State of Illinois filed or commenced without Indictment or Information signed by the States Attorney of Union County and without Chapter 33 I.R.S. Sec. 1 security for costs."

Count IV contained similar allegations; how-

ever, it was there alleged that Sheriff Tripp receipted plaintiff, Amos Rehberger, for $500.

Count V by Jeffery and Count VI by Amos are against the Board of Commissioners of Union County and allege that under section 4-104 of the Local Government and Governmental Employees Tort Immunity Act (Ill. Rev. Stat. 1979, ch. 85, par. 4-104), the Board of Commissioners of Union County are liable to plaintiffs for the alleged bail switching scheme perpetrated by the sheriff and deputy sheriff.

In Counts VII and VIII, Jeffery and Amos Rehberger complaint that Deputy Darnell interfered with the right of plaintiffs to obtain judicial review of the legality of their confinement by making out a sham affidavit to support the ticket or criminal complaint and justify the taking of $250.00 from Jeffery and $500 from Amos. Plaintiffs further al-

lege that the money taken from them was deposited with the circuit clerk and "unjustly advantaged" Darnell and that these actions subjected plaintiffs to prosecution without indictment on speeding and aggravated battery charges.

Count IX names the individual members of of the Board of Commissioners seeking to impose liability on them individually and as a public entity for the "bail switching scheme." Count IX also alleges that defendants Stokes, Boyd, and Rendleman, the members of the Board of Commissioners, failed to require the sheriff to keep accurate records of persons committed to the Union County jail specifying the reasons for commitment and the committing person; and that the inadequate record keeping apparently helped to foster and maintain the bail switching device alleged by plaintiffs.

We affirm the trial court's dismissal of

Counts III through IX of plaintiffs' complaint. This court has previously discussed the standards for determining the sufficiency of a complaint and in Morse v. Nelson (5th Dist. 1977), 48 Ill. App. 3d 895, 363 N.E. 2d 167, stated:

> "In determining the sufficiency of a complaint a court must accept as true all well pleaded facts and all reasonable inferences drawn therefrom. [Citation.] While pleadings are to be liberally construed, and formal or technical allegations are unnecessary, a complaint must nonetheless contain substantial averments of fact necessary to state a cause of action. [Citation.] Mere allegations of legal conclusions are insufficient and such conclusions need not be accepted by a court. [Citation.] A complaint is subject to a motion to dismiss where the well pleaded facts do not entitle one to a recovery. [Citation.] The determination of whether a particular allegation constitutes a fact or conclusion must be made from the context of the pleading with a view to whether the language gives sufficient information to the opponent and to the court of the character of evidence to be introduced or of the issues to be tried." 48 Ill. App. 3d 895, ___, 363 N.E. 2d 167, 169.

As far as is discernible, Counts III through IX of plaintiffs' complaint are conclusory allegations that a "bail switching scheme" or device existed in Union County. No facts are pleaded to support the allegation that certain affidavits were "spurious" or "sham." Further, plaintiffs do not plead any facts in support of their allegation that the "bail switching scheme" interfered with their right to obtain judicial review of the lawfulness of their arrests. In deed, we find it difficult to perceive any interference with plaintiffs' rights when they were brought before a judge, had bond set and were released the same day they were arrested. It should also be noted that the bond was set by a judge, not by the Sheriff or Darnell; therefore, the manner in which they are alleged to have perpetrated a "bail switching scheme" on plaintiffs cannot be ascertained

from the complaint.

The trial court properly dismissed Counts III through IX for failing to state a cause of action. The complaint was couched in conclusory, almost incomprehensible language and failed to allege actions on the part of defendants supporting the pleaders' conclusion that defendants were involved in a "bail switching scheme" or device.

Plaintiffs next contend that the trial court erred in denying their motion for a directed verdict at the close of all the evidence. Under the well established standard enunciated in Pedrick v. Peoria and Eastern R.R. Co. (1967), 37 Ill. 2d 494, 229 N.E. 2d 504, a verdict may be directed only if all the evidence, when viewed in its aspect most favorable to the opponent, so overwhelmingly favors the movant that no contrary verdict based on the evidence could ever stand. The

evidence at trial presented two sharply differing versions of the incident on January 5, 1978. There was ample evidence to support defendants' version of the incident based on Darnell's testimony and the testimony of other officers who came to the Rehberger residence to assist him. The credibility of the witnesses is within the province of the jury, and it is for the jury to resolve disputed facts. Therefore, where sufficient evidence is presented to support a verdict for the party opposing the motion for a directed verdict, it would be error to grant a motion for a directed verdict.

Plaintiffs' final contention is that the trial court erred in denying their post-trial motion. Under this general contention plaintiffs' brief enumerates alleged errors by the trial court in instructing the jury. Plaintiffs contend that the trial court did

not adequately instruct the jury on the grounds for warrantless arrest and entry onto private property. Considering the instructions as a whole, we conclude that the jury was properly instructed. The jury was instructed by Plaintiffs' Instruction No. 8 that they had to determine whether defendant acted within the bounds of his lawful authority under section 107-2 of the Code of Criminal Procedure of 1963 (Ill. Rev. Stat. 1979, ch. 38, par. 107-2), and Court's Instruction No. 1 was an instruction containing the language of section 107-2 (c).

Plaintiffs also assert that by deleting from the instruction subsections (a) and (b) of section 107-2 of the Code of Criminal Procedure of 1963, the court "not only prejudicially broadened the under the color of statutory police power fact issues as the Court intended but changed and added to each Plain-

tiff's burden of proof which we don't think the Court intended." The instruction plaintiffs complain of states as follows:

> "The Chapter 38, I.R.S. Sec. 107-2 Statute under the color of which the defendant in this case purported to act reads as follows:
> A peace officer may arrest a person when he has reasonable grounds to believe that person is committing or has committed an offense."

Subsections (a), (b), and (c) of section 107-2 are written in the disjunctive indicating the various circumstances in which a peace officer has the authority to arrest a person; therefore, any portion thereof which was not relevant to the instant case could have been omitted from the instruction without committing error. It was undisputed at trial that Darnell did not have an arrest warrant; therefore, subsections (a) and (b) are inapplicable to the case at bar. Darnell testified that he personally determined by clocking the

speed of the Rehberger vehicle that the driver was exceeding the speed limit. Since speeding constitutes probable cause to arrest (People v. Leverenz (3d Dist. 1977), 55 Ill. App. 3d 146, 370 N.E. 2d 670), the court's instruction does not change plaintiffs' burden of proof or broaden the power of the officers.

Plaintiffs also argue that their instructions No. 9, 10, and 11 were improperly refused. Instruction No. 11 was non-I.P.I. and incorrectly stated the elements of the case upon which plaintiffs bore the burden of proof. The substance of plaintiffs' instructions No. 9 and 10 was covered in Plaintiffs' Instruction No. 17 which was given the jury; therefore, plaintiffs have not shown any prejudice to themselves by the jury not having been given instructions No. 9 and No. 10. Lau v. West Towns Bus Co. (1959), 16 Ill. 2d 442, 158 N.E. 2d 63.

Defendants have cross-appealed, contending that the trial court erred in denying their motion for attorney fees. Defendants argue that attorney fees are recoverable by the prevailing party in actions based on 42 U.S.C. § 1983 by virtue of 42 U.S.C. § 1988. When the prevailing party is the defendant, the defendant must show that plaintiff's action was unreasonable, frivolous, meritless, or vexatious. (Christianburg Garment Co. v. Equal Employment Opportunity Commission (1978), 434 U.S. 412, 98 S.Ct. 694, 54 L.Ed. 2d 648.) At trial plaintiffs and defendants adduced evidence in support of their positions. Although the facts were sharply disputed and the jury decided in favor of defendants, we cannot say that the trial court erred in finding that plaintiffs' action was not unreasonable, frivolous, meritless, or vexatious; therefore, we conclude that the trial

court's order denying defendan s' motion for attorney fees has not been shown to have been erroneous.

For the foregoing reasons, the judgment of the circuit court of Union County is affirmed.

Finding that a published opinion in this cause would have no precedential value, we affirm the judgment of the circuit court of Union County pursuant to our authority under Supreme Court Rule 23 (Ill. Rev. Stat. 1979, ch. 110A, par. 23).

AFFIRMED.

KARNS and HARRISON, JJ., CONCUR.

APPENDIX D

STATE OF ILLINOIS,)
Appellate Court,) SS
Fifth District)

At a term of the APPELLATE COURT begun and held at Mt. Vernon, on the First Monday, the 1st day of December in the year of our Lord one thousand nine hundred and eighty within and for the State of Illinois.

PRESENT:

Hon. GEORGE W. KASSERMAN, JR., Presiding Justice

Hon. JOHN M. KARNS, Justice.

Hon. MOSES W. HARRISON II, Justice.

WALTER T. SIMMONS, Clerk.

And afterwards, to wit: On the 20th day of August, in the year of our Lord one thousand nine hundred and eighty-one an order was made by said Court in words and figures following, to-wit:

JEFFREY L. REHBERGER and)
AMOS J. REHBERGER,)
)
Plaintiffs-Appellants,)
)
No. 80-242)
Term, 1980)

vs.	)	Appeal from
	)	Circuit Court
GARY DARNELL, LARRY TRIPP,	)	Union County.
individually and as Sheriff	)	
of Union County and Warden	)	
ex Officio of the Union	)	
County Jail, and also	)	
HERMAN L. STOKES, CARL W.	)	
BOYD and W. P. RENDLEMAN,	)	
individually, and as the	)	
Board of Commissioners of	)	
Union County, a local	)	
public entity,	)	
	)	
Defendants-Appellees.	)	

O R D E R

On this day come again the said parties, and the Court having diligently examined and inspected, as well the record and proceedings aforesaid, as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the Court now here, that neither in the record and proceedings aforesaid, nor in the rendition of the judgment aforesaid, is there anything erroenous, vicious or defective, and that that record is no error. THEREFORE, it is ordered by the Court that the judgment aforesaid be AFFIRMED pursuant to Supreme Court Rule 23. And it is further considered by the Court, that the said Appellees recover of and from the said Appellants costs, by them in this behalf expended, and that they have execution therefor.

I, WALTER T. SIMMONS, Clerk of the Appellate Court, within and for the Fifth District of the State of Illinois, DO HEREBY CERTIFY, that the foregoing is a true copy of the Final Order of said Appellate Court, in the above entitled cause of record in my office.

IN TESTIMONY WHEREOF I have set my hand and affixed the seal of the said Court at Mt. Vernon, this 21st day of September in the year of our LORD one thousand nine hundred and eighty-one.

/s/

Clerk of the Appellate Court.

APPENDIX E

55664

ILLINOIS SUPREME COURT
CLELL L. WOODS, CLERK
SUPREME COURT BUILDING
SPRINGFIELD, ILL. 62706
(217) 782-2035

November 30, 1981

Mr. Dennis J. Hogan
Attorney at Law
102 North 10th St.
P.O. Box 117
Murphysboro, IL 62966

No. 55664 - Jeffery L. Rehberger, etal, petitioners, vs. Gary Darnell, et al., etc., respondents. Leave to appeal, Appellate Court, Fifth District

You are hereby notified that the Supreme Court today denied the petition for leave to appeal ir the above entitled cause.

Very truly yours,

/s/ Clell L. Woods

Clerk of the Supreme Court

Opposition

Office - Supreme Court, U.S.
FILED
FEB 25 1982
STEVAS,
CLERK

No. 81-1410

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

AMOS J. REHBERGER,
Petitioner,

vs.

GARY DARNELL,
Respondent.

On Writ of Certiorari to the Appellate Court
For The Fifth Judicial District,
State of Illinois

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CHARLES E. SCHMIDT
MITCHELL, BRANDON & SCHMIDT
P. O. Box 3040
Carbondale, Illinois 62901
(618) 549-0777

St. Louis Law Printing Co., Inc., 411 No. Tenth Street 63101 314-231-4477

I.

QUESTION PRESENTED FOR REVIEW

Are the rights of an individual under the Fifth, Ninth, and Fourteenth Amendments to the United States Constitution violated when the individual is arrested at his home by a county police officer immediately following a high speed automobile chase and after the individual has assaulted the police officer?

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Illinois Revised Statutes, Chapter 38, Section 107(5)	2,10

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State of Illinois

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JURISDICTION

The judgment which Petitioner, Amos Rehberger, seeks to have reviewed was entered by the Appellate Court for the Fifth Judicial District, State of Illinois on August 20,1981. A Petition for Leave to Appeal to the Illinois Supreme Court was denied on November 30, 1981. The case was originally tried before a jury of six in Union County Circuit Court in January and February, 1980 and a Judgment Order in favor of Respondent was entered on the jury verdict on February 14, 1980.

Petitioner alleges that the jurisdiction of this Court is conferred by 28 U.S.C. Section 1957(3) and Supreme Court Rule 19(a). Respondent denies that this Court has jurisdiction since no federal statutory or Constitutional question was addressed by the Appellate Court for the Fifth Judicial District, State of Illinois.

IV.

STATUTES INVOLVED

Illinois Revised Statutes, Chapter 38, Section 107(2) (1977) provides:

> Arrest by Peace Officer. A peace officer may arrest a person when:
>
> (a) He has a warrant commanding that such person be arrested; or
>
> (b) He has reasonable grounds to believe that a warrant for the person's arrest has been issued in this State or in another jurisdiction; or
>
> (c) He has reasonable grounds to believe that the person is committing or has committed an offense.

Illinois Revised Statutes, Chapter 38, Section 107(5) (1977) provides:

> Method of Arrest.
>
> (a) An arrest is made by an actual restraint of the person or by his submission to custody.
>
> (b) An arrest may be made on any day and at any time of the day or night.
>
> (c) An arrest may be made anywhere within the jurisdiction of this State.

(d) All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to make an authorized arrest.

V.

STATEMENT OF THE CASE

This case arises out of an incident that occurred in the early morning hours on January 5, 1978. As a result of that incident, the Petitioner, Amos J. Rehberger, filed suit against Respondent, Gary Darnell, and other individuals no longer parties to these proceedings. The case was tried before a Union County, Illinois, jury in January and February, 1980, and the jury returned a verdict for the Respondent.

Because the Petitioner, Amos J. Rehberger, appears to be challenging the entire judicial process in the Illinois trial and Appellate Court, a detailed summary of the evidence presented is necessary for the Court to understand why a Writ of Certiorari should not be issued.[1]

Evidence

On January 4, 1978, Dr. Amos Rehberger and his son went to a race track together and began the several hour drive home late in the evening. Amos Rehberger drove the first leg of the drive and Jeffery, his son, drove the last leg. (R-71).[2]

---

[1] The opinion of the Appellate Court for the Fifth Judicial District contains a clear, accurate and concise recitation of the facts.

[2] All references are to pages of the transcript of the Record of Appeal.

The Rehbergers drove through Anna, Illinois, and then continued on State Highway 146 towards their home, about ten miles east of Anna. The Respodent, Gary Darnell, a Deputy Sheriff for the County of Union, was on patrol in the unmarked Sheriff's Department car, Unit 905, on Highway 146 traveling in an easterly direction. (R-89). The automobile occupied by the Rehbergers passed the patrol car driven by Gary Darnell about five miles east of Anna near the intersection of Highway 146 and Interstate 57. From this point on, the testimony of the parties regarding the facts of the occurrence is bitterly disputed.

Petitioners' Evidence

The Rehbergers testified that when they passed Deputy Darnell's patrol car, they were traveling at a speed of 30 miles per hour. (R-79). The Rehbergers testified that they never exceeded the speed limit of 55 miles per hour. (R-75). After they passed the patrol car, they were followed all the way home and into their driveway. Deputy Darnell pulled into the driveway and stopped his patrol car behind the Rehbergers automobile.

After the car stopped, Dr. Rehberger immediately went into his trailer so he could relieve himself. (R-21). Deputy Darnell emerged from the patrol car and told Jeffery Rehberger he wanted to speak with him and see his driver's license. Jeffery produced his driver's license and then he and Darnell seated themselves in the patrol car. Deputy Darnell began to write a ticket. (R-48).

Jeffery Rehberger testified that he thought Deputy Darnell was lost and at no time suspected Deputy Darnell was a police officer, despite the fact he was asked to produce his driver's license. (R-57). Both Jeffery and Amos Rehberger testified that they did not see Gary Darnell in a uniform and that they did not see any of the police equipment inside the patrol car, including the C.B. radio, the police radio, the red light on the dashboard, and the shotgun. (R.36, R-65).

Amos Rehberger emerged from the trailer after relieving himself, went to the patrol car, and saw his son, Jeffery, inside. (R-21). According to Dr. Rehberger, Deputy Darnell had straggled, shoulder length hair, and there was nothing on the car that identified it as a patrol car to him. (R-36). After a verbal exchange in which Dr. Rehberger told Deputy Darnell "he looked like a long haired hippie" (R-23) Dr. Rehberger told his son to get out of the car. (R-23). Darnell emerged from the driver's seat with a club striking Dr. Rehberger on various portions of his body, (R-24) but Dr. Rehberger managed to run into the house and phoned the State Police at either Cairo or DuQuoin. (R-25). From inside the trailer he saw Jeffery being clubbed. (R-27). When he came out of the trailer, Deputy Darnell told him to put his hands up and identified himself as a Deputy Sheriff. (R-27).

A few minutes later, Officer Dick Sadler from the Anna Police Department and Officer Herschel Chapman from the Jonesboro Police Department arrived, both officers from nearby communities. Jeffery and Amos Rehberger went to the Union County Sheriff's Department in their respective patrol cars. (R-28). The Rehbergers were released from custody at approximately 3:00 p.m. on the afternoon of January 5.

On cross examination, Dr. Rehberger admitted that he could see clearly how Jeffery was seated in the passenger seat of Deputy Darnell's car but he could not see what Deputy Darnell was doing and did not see any police equipment inside the car. (R-35). He also testified that he did not call the Jonesboro City Police, the Anna City Police, or the Union County Sheriff's Department for help although he admitted that these officers would have been closer than the State Police Headquarters in either Cairo, Illinois, or DuQuoin, Illinois. (R-40). Dr. Rehberger further admitted owning a .22 caliber automatic pistol. (R-41).

Respondent's Evidence

Deputy Darnell testified that he was on patrol in an unmarked Union County Sheriff's vehicle, which carried the designation "Unit 905", and was traveling eastbound at a speed of 55 miles per hour on Highway 146 near the intersection with Interstate 57 when he was passed by a vehicle traveling at a high rate of speed. (R-89). He immediately pursued the vehicle and after catching up to it and maintaining a distance of twenty-five yards, he clocked its speed over a distance of approximately three and one-half miles at 77 to 78 miles per hour. (R-91). Deputy Darnell called the radio dispatcher at the Union County Sheriff's Office, Deputy Julio Bonet, and requested a "10-28" which is a request for the identity of the owner of the vehicle and whether it is a wanted vehicle. (R-91).

Testimony was presented regarding the procedure for obtaining a 10-28. The dispatcher first checks the microfiche files in the Sheriff's Office and if the vehicle is not listed, he then calls the State Police Headquarters in Cairo and they feed the information into a computer. The Cairo State Police then advise the County dispatcher of the identity of the owner of the vehicle and whether it is wanted. The dispatcher then relays this information to the officer on patrol requesting the information. The whole procedure may require anywhere from several seconds to several minutes (R-92, R-280).

Deputy Darnell testified that he does not pull over a vehicle he is pursuing until he receives the "10-28" information as to the identity of the owner and whether it is a wanted vehicle. Deputy Darnell noted that the procedure which is followed for a wanted vehicle owned by somebody from outside the area is different than the procedure followed for a local individual driving a vehicle that is not wanted, since assistance will be requested before stopping a car in the former situation but not the latter.

Deputy Darnell continued to pursue the Rehberger vehicle at a high rate of speed after requesting the "10-28", followed it a

short distance on the Pleasant Hill Road, and when he was pulling into the driveway, he received the information that he had requested on his radio being advised that the automobile was registered to Amos Rehberger and that it was not a wanted vehicle. (R-96). Deputy Darnell testified that he did not use his red light or siren because the Rehbergers' car came to a complete stop off of the roadway in a rural area without the red light or siren being turned on (R-97). Deputy Darnell stopped his patrol car a distance of fifteen to twenty feet behind the Rehbergers' automobile with his headlights on bright, his engine running, and his radios on. (R-98).

Deputy Darnell testified that Unit 905 was equipped with a police radio, a CB radio, a public address system, a riot gun, and a red light, all of which were located in the front seat area of the car. (R-98). Deputy Darnell further testified that he was wearing a full uniform with a star, various insignias, a tie, and a duty belt which held a gun, a key ring, a handcuff case, and mace. Although this was a January night, Deputy Darnell did not have a hat on or his coat on because the car was warm inside. (R-101). Officers Herschel Chapman and Dick Sadler corroborated Deputy Darnell's testimony and confirmed that he was in full uniform on the night of the occurrence and that Unit 905 was equipped with all of the equipment noted. (R-244, R-264).

After Deputy Darnell arrived at the scene, he got out of the patrol car and walked up to the driver of the Rehberger vehicle advising Jeffery Rehberger that he was a Union County Deputy Sheriff and that he wanted to see his driver's license. (R-102). Jeffery Rehberger produced his driver's license and they both seated themselves in Darnell's car. The dome light of the patrol car was on and the door was partially open while Deputy Darnell began to write a ticket. (R-104).

Amos Rehberger emerged from the passenger side of the Rehberger vehicle and put a coat on. He then walked around

and came to the driver's side of Darnell's car and asked him with vulgar language what he was doing. (R-106). Deputy Darnell advised Amos Rehberger that he had business with his son and attempted to close his car door, however, Dr. Rehberger placed his body between the door and the car preventing Deputy Darnell from closing it.(R-108). Deputy Darnell attempted to continue to write the ticket, however, Jeffery snatched the license from his hand and stated he "was not going to write him a citation and [Darnell] had no authority to arrest him." (R-109). Deputy Darnell advised Jeffery that he was under arrest and ordered him not to leave the car, at which time Amos Rehberger grabbed Deputy Darnell by the hair and attempted to pull him from the patrol car. (R-110). Deputy Darnell found his night stick as he was being pulled from the car and various blows were exchanged between Amos Rehberger, Jeffery Rehberger, Deputy Darnell, and the Rehbergers' dog. (R.112). Dr. Rehberger stated that he would "put an end to this" (R-112) and ran into the trailer.

While Amos Rehberger was inside the trailer, Deputy Darnell subdued Jeffery and began to place him in handcuffs. Amos Rehberger emerged from the trailer wielding a blue steel .22 automatic pistol. He walked toward Deputy Darnell brandishing the pistol. (R-115). Deputy Darnell pulled Jeffery between him and Amos Rehberger, drawing his own weapon. (R-116). After Jeffery pleaded with his father, "Dad, put it down," (R-116), Amos Rehberger turned, and ran into the trailer. Deputy Darnell placed Jeffery Rehberger inside the car and urgently called for help on the radio warning the dispatcher that "I have a man with a gun." (R-117).

Amos Rehberger emerged from the trailer a second time with his hands in his coat pocket. Deputy Darnell held Amos Rehberger under cover until Officer Herschel Chapman and Officer Dick Sadler arrived both of whom heard Darnell's call for help on the radio, at which time, Amos Rehberger was frisked

and handcuffed. (R-119). The Rehbergers were then transported to the Union County Sheriff's Headquarters in Officer Chapman's and Officer Sadler's patrol cars.

This incident resulted in Amos Rehberger and Jeffery Rehberger being charged with various criminal acts. Jeffery Rehberger was charged with and found guilty of resisting arrest and speeding in "*People* v. *Jeffery Rehberger,* Union County No. 78-CF-3." Amos Rehberger was charged with and found guilty of aggravated battery and resisting arrest in "*People* v. *Amos Rehberger,* Union County No. 78-CF-2." These convictions were set aside in the opinion bearing the same name, found at 73 Ill. App. 3d 964, 892 N.E.2d 395, 29 Ill. Dec. 838 (5th Dist. 1979), due to an error in the manner in which the Judgment Order was entered.

After being instructed by the Court, the jury deliberated and returned a verdict in favor of the Respondent, Gary Darnell, and against the Petitioner, Amos Rehberger.

ARGUMENT

The Petition for Writ of Certiorari should be denied. No federal question was decided by the Appellate Court for the Fifth Judicial District, State of Illinois, in conflict with any other State or Federal Court of Appeals decision. In fact no question of federal law was even addressed by the Appellate Court for the Fifth Judicial District, State of Illinois.

The Petitioner, Amos J. Rehberger, presented his evidence in support of his claim that his Constitutional rights had been violated and the Respondent, Gary Darnell, presented his evidence that there was no such violation and that Darnell's conduct was proper under the circumstances. The evidence was presented to a jury of six and, although the evidence was conflicting, those six jurors concluded that Amos Rehberger's rights had not been infringed. Amos Rehberger received a fair trail and the verdict of the jury finds overwhelming support in the evidence.

Respondent, Gary Darnell's, authority to arrest an individual that he believes is committing or has committed an offense, and his authority to make an arrest on the Rehbergers' property in the early morning hours are codified in *Illinois Revised Statutes,* Chapter 38, Section 107(2) and Section 107(5) (1977). Since Petitioner does not question the Constitutionality and validity of these provisions, it is difficult to see where this case presents *any* question of significance warranting review by this Court.

A review of the opinion of the Appellate Court for the Fifth Judicial District quickly reveals that the validity of no federal statute or state statute has been drawn in question on the grounds of its being repugnant to the United States Constitution. No question warranting review by this Court has been addressed by the Illinois Appellate Court.

CONCLUSION

The Petition for a Writ of Certiorari presents no questions of sufficient significance warranting review by this Court. The Petitioner received a fair trial and the jury concluded none of his rights were violated. A Writ of Certiorari should *not* be granted.

Respectfully submitted,

CHARLES E. SCHMIDT
MITCHELL, BRANDON & SCHMIDT
1827 West Main Street
P. O. Box 3040
Carbondale, Illinois 62901
(618) 549-0777

Attorney for the Respondent,
Gary Darnell